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SUBJECT: SOME COMMITMENTS ARE HARDER THAN OTHERS -- PRODDING VIETNAM
ON WTO IMPLEMENTATION

REF: A) HANOI 1212
B) HANOI 310
C) 06 HANOI 2602

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(U) This cable is sensitive but unclassified. Not for Internet.

¶11. (SBU) SUMMARY. Vietnam, widely praised for its progressive and aggressive approach toward opening its markets, is finding that fulfilling some of its WTO commitments may be harder than it thought. Entrenched local interests, poor coordination, and an overly-complex bureaucratic process can all block much-needed reform. Recently published regulations impose new restrictions on foreign importers, forcing them to disband their de facto distribution networks and choose a single nationwide distributor. An eight month-overdue IPR criminal regulation is nowhere in sight, and the GVN now tells us that it will come next year at the earliest. State-sponsored piracy of U.S. broadcast content continues unchecked, in blatant violation of Vietnam's trade commitments. Mission Vietnam continues to encourage all levels of the GVN to hold to the spirit and letter of its WTO obligations, warning that these lapses could erode the country's hard-won reputation as a reliable trading partner. END SUMMARY.

BLINDSIDING IMPORTERS WITH A MARKET BARRIER

¶12. (U) There was an audible groan from the business and diplomatic communities when Vietnam finally issued long-awaited regulations in pursuance of its WTO trading rights commitments on July 17 of this year. Ministry of Trade "Circular 9" (akin to an Executive Order) limits foreign importers to a single local distributor. (Note: The hierarchies of legal instruments in Vietnam are as follows: laws, which must be enacted by the National Assembly; Decrees, which are issued by the Prime Minister; and Circulars, which are issued by the relevant ministries to provide detailed guidance to implement the higher-level documents.)

¶13. (U) Circular 9 is clearly inconsistent with Vietnam's WTO commitments; in the Working Party Report Vietnam pledged that importers "would be free to select a distributor or distributors of their choice" and that Vietnam "would not apply any restrictions on the choice of the distributor or distributors". Since 100% foreign owned distributors are not allowed to operate in Vietnam until 1/2009, the new regulations could stifle competition. Foreign importers are concerned that their market penetration will be limited if they are forced to rely on a single nationwide distributor. Some sectors, like chemicals, do not even have a reliable local distribution network, let alone a distributor capable of nation-wide business activities.

¶4. (SBU) Embassy Hanoi and Congen HCMC have met with U.S. importers, local AmCham representatives and the diplomatic community to discuss a strategy to urge Vietnam to resolve this WTO inconsistency. Emboffs also met with the drafters of Circular 9 at the Ministry of Industry and Trade (MOIT) on August 12 and again on August 30 to raise our concerns. Working together with USTR, Mission submitted a list of 13 questions to the MOIT asking how it intends to reconcile the new restrictions with its WTO obligations, in preparations for an exhaustive review of Vietnam's recent trading right regulations during the second week of September.

FROM A BAD CIRCULAR TO A MISSING CIRCULAR

¶5. (U) Vietnam's Supreme Court (SPC) has yet to criminalize commercial-scale copyright and trademark infringement, eight months after it should have enacted a circular doing so. Ultimately, Vietnam must revise its criminal code to cover the scope of copyright and trademark infringement included in its WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) obligations, but this will take time. The GVN committed to U.S. negotiators during the WTO accession process that it would issue a circular by the time of accession to criminalize commercial-scale copyright and trademark infringement until the GVN can make the necessary revisions to its criminal code.

¶6. (SBU) Despite repeated and extensive USG lobbying, the SPC has failed to act on Vietnam's commitment. USTR has provided specific draft language to include in the circular on multiple occasions, and the Embassy and USTR have pushed both the SPC and the Ministry of Trade (now MOIT) to live up to Vietnam's TRIPS obligations (REF A and B). Furthermore, in a recent conversation with Embassy officers, the SPC drafters said that they are unable to reconcile the TRIPS language with domestic laws, and reported that we "must likely wait until 2008, when the SPC begins to re-draft the criminal code."

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¶7. (SBU) Coordination on WTO compliance issues are clearly a challenge for the GVN, as evidenced by the SPC's about-face from its discussions with USTR's intellectual property expert during the Annual BTA Review in June (REF A). Mission has stressed to the MOIT negotiators who made the commitment that SPC's suggestion to wait until next year is unacceptable.

UNCHECKED SIGNAL PIRACY

¶8. (SBU) In a blatant example of the GVN's unwillingness (or inability) to stop Vietnamese enterprises from violating its international trade commitments on IPR protection, the Television Technology Investment and Development Company (VTC) continues to pirate international broadcast content, including multiple U.S.-owned channels, and illegally distribute pirated content to an estimated 1.5 million customers. VTC's actions are all the more egregious because it is a state-owned company, under the control of the Ministry of Information and Communications.

¶9. (SBU) The Embassy, USTR and the broadcast industry have mounted a multi-year campaign to compel the GVN to stop VTC from pirating content. While these efforts have at times yielded temporary results (VTC removed most U.S.-owned content from its lineup shortly following the June BTA Review), VTC has resumed its illicit activities. Ambassador Marine raised this with numerous ministers and other GVN authorities over the past several years, as have industry leaders. In recent months, cease and desist letters issued by several U.S. companies have led to VTC removing those channels from its broadcast package. At the latest check, however, VTC is still illegally distributing two U.S.-owned channels.

NEXT STEPS

¶10. (SBU) Trade agreement compliance issues feature prominently in recently arrived Ambassador Michalak's initial consultations with

Vietnam's leaders. The annual BTA review and the newly-formed TIFA Joint Council will both present excellent opportunities to focus attention on these issues. Post will also continue to raise the criminal circular and signal piracy in our input into the annual Special 301 Review, a tool which has provided some traction with GVN authorities over the past several years.

COMMENT: IS A PATTERN EMERGING?

¶11. (SBU) Although there is little evidence of a concerted agenda to skirt WTO obligations, it is clear that these cases are not the result of carelessness or failure to anticipate the implications of Vietnam's trading commitments. The MOIT drafters told Emboffs that there was much interagency discussion on the distributor restrictions and that former Minister Tuyen himself agreed to it. Although many of our contacts suspect protectionism, the biggest losers are the Vietnamese distributors. In the case of cable piracy, the reasons are clearer. GVN officials themselves have admitted that "powerful interests" are behind VTC -- hinting not-so-subtly at influential corrupt officials

¶12. (SBU) The failure to criminalize commercial-scale IPR violations appears more to be a case of the negotiators and drafters being unable to get the necessary inter-ministerial "buy-in," although it does not seem to be for lack of effort. Moreover, the GVN remains willing to engage with the USG, and in many cases, U.S. industry members on these issues. Continued and persistent dialogue with appropriate GVN authorities should help us move closer to resolution on these cases and prevent the development of a more widespread pattern of Vietnam failing to meet its international obligations.

¶13. (U) This cable was coordinated with Congen HCMC.

MICHALAK